

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

OCTAVIO HERNANDEZ SUAREZ,
Defendant.

CIV. NO. S-06-2728 EJG
CR. NO. S-02-0246 EJG

ORDER DENYING REQUEST FOR
CERTIFICATE OF APPEALABILITY

Defendant, a federal prisoner proceeding pro se, has filed a Notice of Appeal from this court's March 20, 2008 order denying his § 2255 motion to vacate, set aside or correct his sentence. He has also filed a request for a certificate of appealability, which certificate must be issued before defendant can appeal the decision. See Fed. R. App. P. 22(b). Such certification may issue "only if [defendant] has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b)(1).

1 For all of the reasons stated in the court's March 20, 2008
2 order, defendant has not made a substantial showing of the denial
3 of a constitutional right. Although two of his claims arise
4 under the specter of the constitution, defendant has not
5 demonstrated that "reasonable jurists would find the District
6 Court's assessment of the constitutional claims debatable or
7 wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). Rather,
8 he merely reargues his motion to vacate, set aside or correct his
9 sentence, disagreeing with the evidence proffered against him,
10 but failing to present any of his own. Accordingly, the motion
11 for a certificate of appealability is DENIED.

12 IT IS SO ORDERED.

13 Dated: May 21, 2008

14 /s/ Edward J. Garcia
15 EDWARD J. GARCIA, JUDGE
16 UNITED STATES DISTRICT COURT
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